

**House File 97 - Introduced**

HOUSE FILE 97

BY GASKILL

**A BILL FOR**

- 1 An Act requiring a postelection audit after each general
- 2 election and including effective and applicability date
- 3 provisions.
- 4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 49.53, subsection 1, Code 2011, is  
2 amended to read as follows:

3 1. The commissioner shall not less than four nor more than  
4 twenty days before the day of each election, except those for  
5 which different publication requirements are prescribed by law,  
6 publish notice of the election. The notice shall contain a  
7 facsimile of the portion of the ballot containing the first  
8 rotation as prescribed by section 49.31, subsection 2, and  
9 shall show the names of all candidates or nominees and the  
10 office each seeks, and all public questions, to be voted upon  
11 at the election. The sample ballot published as a part of the  
12 notice may at the discretion of the commissioner be reduced in  
13 size relative to the actual ballot but such reduction shall  
14 not cause upper case letters appearing in candidates' names or  
15 in summaries of public measures on the published sample ballot  
16 to be less than nine point type. The notice shall also state  
17 the date of the election, the hours the polls will be open,  
18 the location of each polling place at which voting is to occur  
19 in the election, and the names of the precincts voting at each  
20 polling place, but the statement need not set forth any fact  
21 which is apparent from the portion of the ballot appearing as  
22 a part of the same notice. The notice shall include the full  
23 text of all public measures to be voted upon at the election.  
24 For the general election, the notice shall also include notice  
25 of the time and place of the postelection audit required in  
26 section 50.51.

27 Sec. 2. Section 50.12, Code 2011, is amended to read as  
28 follows:

29 **50.12 Return and preservation of ballots.**

30 Immediately after making the proclamation, and before  
31 separating, the board members of each precinct in which votes  
32 have been received by paper ballot shall enclose in an envelope  
33 or other container all ballots which have been counted by them,  
34 except those endorsed "Rejected as double", "Defective", or  
35 "Objected to", and securely seal the envelope. The signatures

1 of all board members of the precinct shall be placed across  
2 the seal or the opening of the container so that it cannot  
3 be opened without breaking the seal. The precinct election  
4 officials shall return all the ballots to the commissioner, who  
5 shall carefully preserve them for six months. Ballots from  
6 elections for federal offices shall be preserved for twenty-two  
7 months. The sealed packages containing voted ballots shall  
8 be opened only for an official recount authorized by section  
9 50.48, 50.49, or 50.50, for an election contest held pursuant  
10 to chapters 57 through 62, for a postelection audit required by  
11 section 50.51, or to destroy the ballots pursuant to section  
12 50.19.

13 Sec. 3. Section 50.48, subsection 1, paragraph a,  
14 unnumbered paragraph 1, Code 2011, is amended to read as  
15 follows:

16 The county board of canvassers shall order a recount of the  
17 votes cast for a particular office or nomination in one or  
18 more specified election precincts in that county if a written  
19 request ~~therefor~~ for a recount is made not later than 5:00 p.m.  
20 on the third day following the county board's canvass of the  
21 election in question. However, if a postelection audit is  
22 expanded pursuant to section 50.51, subsection 6, paragraph  
23 "d", the request for a recount shall be made not later than  
24 5:00 p.m. on the first business day following completion of  
25 the audit. The request shall be filed with the commissioner  
26 of that county, or with the commissioner responsible for  
27 conducting the election if section 47.2, subsection 2, is  
28 applicable, and shall be signed by either of the following:

29 Sec. 4. Section 50.49, subsection 1, Code 2011, is amended  
30 to read as follows:

31 1. A recount for any public measure shall be ordered by  
32 the board of canvassers if a petition requesting a recount is  
33 filed with the county commissioner not later than three days  
34 after the completion of the canvass of votes for the election  
35 at which the question appeared on the ballot. However, if a

1 postelection audit is expanded to additional precincts pursuant  
2 to section 50.51, subsection 6, paragraph "d", the request for  
3 a recount shall be made not later than 5:00 p.m. on the first  
4 business day following completion of the audit. The petition  
5 shall be signed by the greater of not less than ten eligible  
6 electors or a number of eligible electors equaling one percent  
7 of the total number of votes cast upon the public measure.  
8 Each petitioner must be a person who was entitled to vote on  
9 the public measure in question or would have been so entitled  
10 if registered to vote.

11 **Sec. 5. NEW SECTION. 50.51 Postelection audit.**

12 1. *a.* After each general election, a postelection audit of  
13 voting systems shall be conducted as provided in this section.

14 *b.* A postelection audit conducted pursuant to this section  
15 shall not affect a person's right to request a recount under  
16 section 50.48 or the right of electors to request a recount  
17 of a public measure under section 50.49 or the commissioner's  
18 right to request an administrative recount under section 50.50.  
19 If a request for a recount is filed under section 50.48 or  
20 50.49, a postelection audit of the office or public measure for  
21 which the recount was requested shall not be conducted or shall  
22 be terminated, as the case may be.

23 2. The commissioner shall include notice of the time and  
24 place of the postelection audit in the notice of the election  
25 published pursuant to section 49.53. The commissioner shall  
26 also notify the county chairperson of each political party  
27 referred to in section 49.13, subsection 2, of the time and  
28 place of the postelection audit.

29 3. *a.* The postelection audit shall be conducted for the  
30 offices of president of the United States and governor and  
31 an additional office listed in paragraph "b" or "c", and the  
32 offices listed in paragraph "d", if applicable.

33 *b.* When the office of president of the United States  
34 appears on the ballot, the votes cast for one of the following  
35 contested offices shall be audited:

1 (1) United States senator.

2 (2) United States representative.

3 (3) Senator in the general assembly.

4 (4) Representative in the general assembly.

5 *c.* When the office of governor appears on the ballot, the  
6 votes cast for one of the following contested offices shall be  
7 audited:

8 (1) United States senator.

9 (2) United States representative.

10 (3) Senator in the general assembly.

11 (4) Representative in the general assembly.

12 (5) Secretary of state.

13 (6) Auditor of state.

14 (7) Treasurer of state.

15 (8) Attorney general.

16 (9) Secretary of agriculture.

17 *d.* The additional office to be audited under paragraph  
18 "*b*" or "*c*" shall be chosen by lot at the same time and in the  
19 same manner that precincts to be audited are chosen pursuant  
20 to subsection 4. If in the election to be audited, none of  
21 the offices listed in paragraph "*b*" were contested races,  
22 the offices of county supervisor, county auditor, and county  
23 sheriff shall be entered in the lot, and if none of the offices  
24 listed in paragraph "*c*" were contested races, the offices  
25 of county supervisor, county attorney, county treasurer, and  
26 county recorder shall be entered in the lot.

27 *e.* In addition to the offices listed in this subsection  
28 as being subject to the postelection audit, the commissioner  
29 may choose to include any other office or public measure that  
30 appeared on the ballot in those precincts chosen for the  
31 postelection audit.

32 4. *a.* The precincts for which a postelection audit shall  
33 be conducted shall be chosen by lot by the chairperson of  
34 the county board of canvassers on the day the canvass of  
35 the general election is conducted. After the precincts have

1 been chosen, the additional office to be audited, as provided  
2 in subsection 3, shall be chosen by lot by the chairperson.  
3 The selection proceedings shall be open to the public and to  
4 observers from the political parties.

5 *b.* The number of precincts chosen shall be as follows:

6 (1) In counties with fifty thousand or fewer registered  
7 voters, two precincts.

8 (2) In counties with more than fifty thousand registered  
9 voters up to and including one hundred thousand registered  
10 voters, three precincts.

11 (3) In counties with more than one hundred thousand  
12 registered voters, four precincts.

13 *c.* Notwithstanding paragraph "b", in counties with seven  
14 or fewer precincts, one precinct shall be chosen for the  
15 postelection audit.

16 *d.* The absentee and special voters precinct established  
17 in section 53.20 shall be considered a precinct for purposes  
18 of a postelection audit. If the absentee and special voters  
19 precinct is chosen by lot to be audited or chosen by the  
20 commissioner pursuant to paragraph "f", a number of ballots  
21 equal to five percent of the absentee ballots cast in the  
22 election shall be audited.

23 *e.* When a precinct other than the absentee and special  
24 voters precinct is chosen in which one thousand five hundred  
25 or more ballots were cast in the election, the chairperson  
26 shall, for each such precinct, choose one less precinct than  
27 the number required by paragraph "b". If such a precinct is  
28 chosen last among the number of precincts required by paragraph  
29 "b", then that precinct shall be audited, and the first precinct  
30 drawn that was not the absentee and special voters precinct  
31 shall not be audited.

32 *f.* The commissioner may choose to include in the audit  
33 additional precincts not chosen by lot under this subsection.

34 *g.* For purposes of paragraph "b", "registered voters"  
35 means those persons registered to vote as of the close of

1 registration for the general election pursuant to section  
2 48A.9, subsection 1.

3 *h.* The county board of canvassers shall not use a  
4 computerized process of randomization as the method of  
5 selecting by lot the precincts and offices to be audited.

6 5. The commissioner shall appoint the members of the  
7 postelection audit board. The postelection audit board shall  
8 be comprised of members affiliated with the political parties  
9 as provided for election boards in section 49.12.

10 6. *a.* When all members of the postelection audit board have  
11 been selected and the canvass is completed, the board shall  
12 undertake the required audit. The audit shall be completed no  
13 later than two business days following the canvass. The audit  
14 shall be open to the public and to observers from the political  
15 parties.

16 *b.* The ballots in each precinct chosen shall be counted  
17 by hand. The commissioner or the commissioner's designee  
18 shall supervise the handling of ballots, tally lists, and the  
19 printed reports from the automatic tabulating equipment to  
20 ensure that the ballots, tally lists, and printed reports are  
21 protected from alteration or damage. The board shall open only  
22 the sealed ballot containers from the precincts chosen to be  
23 audited. The board shall recount only the ballots which were  
24 voted and counted for the office or public measure that is the  
25 subject of the audit. Only votes marked in accordance with the  
26 instructions that are printed on the ballot in a precinct being  
27 audited shall be counted in the audit.

28 *c.* Immediately following the conclusion of the audit,  
29 the postelection audit board shall make and file with the  
30 commissioner a written report of its findings, which report  
31 shall be signed by the chairperson of the postelection audit  
32 board and one other member of the board who is affiliated with  
33 a political party different than that of the chairperson.

34 *d.* (1) If the postelection audit of an office or public  
35 measure reveals a difference greater than one-half of one

1 percent, but no fewer than two votes, from the results on  
2 the printed report from the automatic tabulating equipment,  
3 the postelection audit board shall, within two days, conduct  
4 an audit of the offices or public measures for which such  
5 difference was found in at least two additional precincts  
6 chosen in the same manner the original precincts were chosen  
7 and shall immediately report the results to the commissioner.

8 (2) If the second audit also indicates a difference in the  
9 vote totals that is greater than one-half of one percent, but  
10 no fewer than two votes, from the results on the printed report  
11 from the automatic tabulating equipment, the commissioner shall  
12 immediately notify the state commissioner of elections.

13 (3) The state commissioner of elections may direct the  
14 commissioner, or any other commissioner of a county where the  
15 office or public measure appeared on the ballot, to conduct an  
16 additional audit of the office or public measure in a number of  
17 precincts determined by the state commissioner.

18 7. All reports pertaining to a postelection audit shall be  
19 filed with the state commissioner of elections, and the state  
20 commissioner shall make public the results of the postelection  
21 audit in each county as those reports are received.

22 8. The state commissioner of elections shall adopt rules  
23 to implement this section including but not limited to rules  
24 establishing criteria for the state commissioner to utilize  
25 when evaluating the results of postelection audits.

26 Sec. 6. APPLICABILITY. This Act applies to the general  
27 election held in 2012 and all subsequent general elections.

28 Sec. 7. EFFECTIVE DATE. This Act takes effect July 1, 2011.

29

#### EXPLANATION

30 This bill requires a postelection audit after each general  
31 election. The postelection audit is a hand count of the  
32 ballots cast in certain contested, partisan offices in selected  
33 precincts. The precincts and offices to be audited are to be  
34 selected publicly by lot by the county board of canvassers,  
35 except that the office of President of the United States

1 and governor are required to be audited after each general  
2 election.

3 The bill provides that the number of precincts to be audited  
4 is as follows:

5 (1) In counties with 50,000 or fewer registered voters, two  
6 precincts.

7 (2) In counties with more than 50,000 registered voters up  
8 to and including 100,000 registered voters, three precincts.

9 (3) In counties with more than 100,000 registered voters,  
10 four precincts.

11 The bill provides that if the postelection audit reveals a  
12 difference greater than one-half of 1 percent from the results  
13 on the printed report from the automatic tabulating equipment,  
14 the postelection audit board shall, within two days, conduct  
15 an audit of the offices for which such difference was found in  
16 at least two additional precincts. If the second audit also  
17 indicates a difference in the vote totals that is greater than  
18 one-half of 1 percent, but no fewer than two votes, from the  
19 results on the printed report from the automatic tabulating  
20 equipment, the commissioner shall immediately notify the state  
21 commissioner of elections. The state commissioner may direct  
22 the commissioner, or any other commissioner of a county where  
23 the office appeared on the ballot, to conduct an additional  
24 audit of the office in a number of precincts determined by the  
25 state commissioner.

26 The bill provides that if a recount of an office or public  
27 measure is requested, the postelection audit of that office or  
28 public measure shall not be conducted or shall be terminated,  
29 as the case may be.

30 The bill requires the state commissioner of elections to  
31 make public the results of postelection audits.

32 The bill takes effect July 1, 2011, and applies to the  
33 general election held in 2012 and all subsequent general  
34 elections.